



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket DARS-2022-0002]

RIN 0750-AK96

Defense Federal Acquisition Regulation Supplement:

Reauthorization and Improvement of Mentor-Protégé Program (DFARS Case 2020-D009)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that reauthorizes and modifies the DoD Mentor-Protégé Program.

DATES: Effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, 703-508-7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 87 FR 11009 on February 28, 2022, to revise the DFARS to implement section 872 of the National Defense Authorization Act (NDAA) for

Fiscal Year (FY) 2020 (Pub. L. 116-92). Section 872 modifies subsection (j) of section 831 of the NDAA for FY 1991 (Pub. L. 101-510) to reauthorize and improve the DoD Mentor-Protégé Program. Section 872 extends the date for entering into a mentor-protégé agreement, extends the date for reimbursement of mentors, limits the term for program participation, extends the date for a mentor to receive credit toward the attainment of small business subcontracting goals, and expands eligibility for protégé firms. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment follows:

A. Summary of Significant Changes From the Proposed Rule

No changes were made from the proposed rule as a result of the public comment received.

B. Analysis of Public Comments

Comment: One respondent indicated a conditional individual waiver(s) to the nonmanufacturing rule should be issued in conjunction with the extended DoD Mentor-Protégé Program through September 30, 2024.

Response: This is outside the scope of the rule. Individual waivers to the nonmanufacturer rule are addressed at Federal Acquisition Regulation (FAR) 19.505(c)(4)(B) and 13 CFR 121.1203.

C. Other changes

A change was made at DFARS Appendix I, I-101, Definitions, to delete the definitions for minority institution of higher education, women-owned small business, and service-disabled veteran-owned small business. These terms are already defined in FAR part 2, and the definitions in FAR part 2 apply to the DFARS unless otherwise stated. Minor editorial changes were made at DFARS 219.7101 and 219.7102. No other changes were made from the proposed rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf Items

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing provisions or clauses or their applicability to contracts at or below the simplified acquisition threshold and acquisitions of commercial services and commercial products, including commercially available off-the-shelf items.

IV. Expected Impact of the Rule

This rule implements section 872 of the NDAA for FY 2020, which reauthorizes and improves the DoD Mentor-Protégé program. The purpose of the program is to provide incentives to major DoD contractors to furnish eligible small business concerns with assistance designed to-

(1) Enhance the capabilities of small business concerns to perform as subcontractors and suppliers under DoD contracts and other contracts and subcontracts; and

(2) Increase the participation of such business concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts.

Therefore, this rule will benefit small business concerns by extending the opportunity to enter into DoD mentor-protégé agreements. In addition, the eligibility of small business concerns is expanded as this rule removes prior restrictions for eligibility by aligning the size of the small business with the size standard associated with its primary North American Industry Classification System code. This rule is also expected to benefit large entities and the Government by expanding the defense industrial base.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The final regulatory flexibility analysis is summarized as follows:

This final rule is necessary to implement section 872 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92). The objective of this rule is to implement section 872, which reauthorizes and improves the DoD Mentor-Protégé Program (Program). The authority for entering into new agreements expired on September 30, 2018. This rule extends the date for new mentor-protégé agreements to September 30, 2024. This rule also extends the date for reimbursement of incurred costs under the Program to September 30, 2026, as well as the date for costs to be applied to a mentor's subcontracting plan goals. The eligibility of a small business concern, as

related to the Program, is also modified to align with the size standard associated with its primary North American Industry Classification System code.

No comments were received in response to the initial regulatory flexibility analysis.

The number of ongoing DoD mentor-protégé agreements in FY 2018 and FY 2019 was 90, four of which expired in FY 2019. No new agreements were entered into in FY 2019 since the authority to enter into agreements expired on September 30, 2018. The number of ongoing agreements in FY 2020 was 86, 29 of which expired. As of June 2021, there were 57 ongoing agreements, 50 new agreements, and 12 expiring agreements, with a total of 95. DoD estimates 66 new agreements will be entered into in FY 2022, 82 in FY 2023, and 98 in FY 2024.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

DoD did not identify any significant alternatives that would minimize or reduce the impact on small entities. Any impact is expected to be beneficial.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0332.

List of Subjects in 48 CFR Part 219 and Appendix I to Chapter 2

Government *procurement*.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 and appendix I to chapter 2 are amended as follows:

PART 219—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 219 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Revise section 219.7100 to read as follows:

219.7100 Scope.

This subpart implements the Pilot Mentor-Protégé Program (referred to as the Program) established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510; 10 U.S.C. 2302 note). The purpose of the Program is to provide incentives for DoD contractors to assist protégé firms in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

219.7101 [Amended]

3. Amend section 219.7101 by removing "Appendix I" and adding "appendix I" in its place.

4. Amend section 219.7102 by—

a. In paragraph (a), removing "Appendix I" and adding "appendix I" in its place;

b. In paragraphs (a) and (b), removing the periods and adding semicolons in their places;

- c. Redesignating paragraph (c) as paragraph (d);
- d. Adding a new paragraph (c); and
- e. Revising newly redesignated paragraphs (d) introductory text and (d)(1)(ii).

The addition and revisions read as follows:

219.7102 General.

* * * * *

(c) A preliminary assessment of the protégé firm's cybersecurity readiness. The DoD Office of Small Business Programs (OSBP), Office of the Under Secretary of Defense, Acquisition and Sustainment (OUSD(A&S)), provides this preliminary assessment, which is a benefit of program participation; and

(d) Incentives that DoD may provide to mentor firms, which include—

(1) * * *

(ii) A separate contract, upon written determination by the Director, OSBP, of the cognizant military department or defense agency that unusual circumstances justify reimbursement using a separate contract; or

* * * * *

4. Revise section 219.7103-1 to read as follows:

219.7103-1 General.

The procedures for application, acceptance, and participation in the Program are in appendix I, Policy and Procedures for the DoD Pilot Mentor-Protégé Program. The Mentor-Protégé Program

Director, OSBP, OUSD(A&S), has the authority to approve contractors as mentor firms. The Director, OSBP, of each military department or defense agency has the authority to approve mentor-protégé agreements and forward approved mentor-protégé agreements to the contracting officer when funding is available.

5. Amend section 219.7103-2 by—

a. In the introductory text, removing “must” and adding “shall” in its place;

b. Revising paragraphs (d) (1), (e) (3), and (f);

c. In paragraph (g), removing “Appendix I” and adding “appendix I” in its place; and

d. Revising paragraph (h).

The revisions read as follows:

219.7103-2 Contracting officer responsibilities.

* * * * *

(d) * * *

(1) A DoD program manager or the Director, OSBP, of the cognizant military department or defense agency has made funds available for that purpose; and

* * * * *

(e) * * *

(3) The Director, OSBP, of the military department or defense agency has made a determination in accordance with 219.7102(d) (1) (ii).

(f) Not authorize reimbursement for costs of assistance furnished to a protégé firm in excess of \$1 million in a fiscal year unless a written determination from the Director, OSBP, of the military department or defense agency is obtained.

* * * * *

(h) Provide a copy of the approved mentor-protégé agreement to the Defense Contract Management Agency (DCMA) small business professional responsible for conducting the annual performance review (see appendix I, section I-113).

219.7104 [Amended]

6. Amend section 219.7104 in paragraphs (b) and (d) by removing "September 30, 2021" and adding "September 30, 2026" in its place.

219.7106 [Amended]

7. Amend section 219.7106 by removing "The Defense Contract Management Agency" and adding "DCMA" in its place.

8. Amend appendix I to chapter 2 by—

a. In section I-100—

i. Revising paragraph (a) introductory text;

ii. In paragraph (c)(1), removing "2 years" and adding "5 years" in its place;

iii. Revising paragraph (c)(3); and

iv. Adding paragraph (c)(4).

b. Revising section I-101.

c. In section I-102—

- i. In paragraph (a) (2) (ii), removing the word "and" at the end of the paragraph;
 - ii. Adding paragraph (a) (2) (iv);
 - iii. Revising paragraph (a) (3);
 - iv. In paragraph (b) (3), removing "Less than half" and adding "Not more than" in its place;
 - v. In paragraph (e), removing "Office of Small Business Programs (OSBP)" and adding "OSBP" in its place;
 - vi. In paragraph (g) (1), removing "pursuant to approved mentor-protégé agreements" and adding "in accordance with the approved mentor-protégé agreement" in its place;
 - vii. In paragraph (g) (3), removing "cognizant Component Director, SBP" and adding "Director, OSBP, of the cognizant military department or defense agency" in its place; and
 - viii. Adding paragraph (h).
- d. In section I-103—
- i. In paragraph (a), removing "September 30, 2018" and adding "September 30, 2024" in its place;
 - ii. In paragraph (b) introductory text, removing "prior to September 30, 2021" and adding "through September 30, 2026" in its place; and
 - iii. In paragraph (b) (3), removing "cognizant Component Director, SBP," and adding "Director, OSBP, of the cognizant military department or defense agency" in its place.
- e. In section I-104, revising paragraph (c).
- f. In section I-105, revising paragraphs (a) and (c).

g. In section I-106—

i. In paragraph (d)(1)(i), removing “marketing” and adding “marketing and technology commercialization, compliance systems” in its place;

ii. In paragraph (d)(1)(ii), removing “quality assurance” and adding “quality assurance; acquisition or transfer of hardware, tooling, or software; and technology transfer and transition” in its place;

iii. In paragraph (d)(2), removing “firmunder” and adding “firm under” in its place;

iv. In paragraph (d)(4), removing “Subpart” and adding “subpart” in its place; and

v. Adding paragraph (g).

h. In section I-107—

i. In paragraph (a), removing “e-mail” and adding “email” in its place;

ii. In paragraph (j), removing “2 years” and adding “5 years” in its place; and

iii. Revising paragraph (k).

i. In section I-108—

i. In paragraph (a) introductory text, removing “DoD component” and adding “military department or defense agency” in its place;

ii. In paragraph (a)(5), removing “3 years (Term of agreements may not exceed 5 years)” and adding “2 years

(agreements may not exceed 5 years) (see I-107(k))" in its place;

iii. In paragraph (a)(6), removing "\$1,000,000" and adding "\$1 million" in its place;

iv. In paragraph (b), removing "cognizant DoD components" and adding "the military department or defense agency" in its place;

v. In paragraph (c), removing "cognizant Component Director, SBP, prior" and adding "Director, OSBP, of the military department or defense agency prior" in its place;

vi. In paragraph (d), removing "cognizant DoD component" and adding "military department or defense agency" in its place;

vii. In paragraph (e), removing "component" and "Director, SBP" and adding "military department or defense agency" and "the Director, OSBP" in their places, respectively; and

viii. In paragraph (f), removing "cognizant Component Director, SBP," and adding "Director, OSBP, of the military department or defense agency" in its place.

j. In section I-109—

i. In the introductory text, removing "agreements" and adding "agreements including agreements that provide for both reimbursement and subcontracting credit" in its place;

ii. In paragraph (c), removing "Component Directors, SBP" and adding "Directors, OSBP, of the military departments or defense agencies" in its place; and

iii. In paragraph (d), removing "\$1,000,000" and "cognizant Component Director, SBP" wherever they appear and adding "\$1

million" and "Director, OSBP, of the military department or defense agency" in their places, respectively.

k. In section I-110, adding introductory text.

l. In section I-110.1, at the end of the first sentence in paragraph (a), removing "Plans ." and adding "Plans." in its place.

m. In section I-110.2, paragraphs (a) introductory text, (b) introductory text, and (c), removing "SBP" and adding "OSBP" in its place.

n. In section I-111-

i. In paragraph (a), removing "cognizant Component Director, SBP," and "administrative contracting officer" and adding "Director, OSBP, of the cognizant military department or defense agency" and "small business professional" in their places, respectively; and

ii. Adding paragraph (f).

o. In section I-112.2-

i. In paragraph (a) (2) (xii) (A), removing "success assistance" and adding "success developmental assistance" in its place;

ii. In paragraph (a) (2) (xii) (B), removing "contracts" and adding "contracts, including but not limited to the transition of innovative technology into a program of record" in its place;

iii. In paragraph (a) (4), removing "at: <http://www.acq.osd.mil/osbp/sb/programs/mpp/resources.shtml>" and adding "at <https://business.defense.gov/Programs/Mentor-Protégé-Program/MPP-Resources/>" in its place;

iv. In paragraph (b) (2), removing "2 fiscal years" and adding "5 fiscal years" in its place;

v. In paragraph (d) (1), removing "cognizant Component Director, SBP," and adding "Director, OSBP, of the military department or defense agency" in its place;

vi. In paragraph (d) (2), removing "cognizant Component Director, SBP," and adding "Director, OSBP, of the military department or defense agency," in its place; and

p. Revising section I-113.

q. Adding an authority citation at the end of the appendix.

The revisions and additions read as follows:

Appendix I to Chapter 2—Policy and Procedures for the DoD Pilot Mentor-Protégé Program

I-100 Purpose.

(a) This appendix implements the Pilot Mentor-Protégé Program (the Program) established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510; 10 U.S.C. 2302 note). The purpose of the Program is to provide incentives to major DoD contractors to furnish eligible small business concerns with assistance designed to—

* * * * *

(c) * * *

(3) An increase in protégé participation in DoD science and technology programs; and

(4) An increase in job creation of protégé firms from the date of execution of the mentor-protégé agreement until 5 years after completion of the mentor-protégé agreement.

* * * * *

I-101 Definitions.

As used in this appendix—

Affiliation means, with respect to a relationship between a mentor firm and a protégé firm, a relationship described under 13 CFR 121.103.

Eligible entity employing the severely disabled means a business entity operated on a for-profit or nonprofit basis that—

(1) Uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;

(2) Employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;

(3) Employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and

(4) Pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.

Severely disabled individual means an individual who is blind or severely disabled as defined in 41 U.S.C. 8501.

I-102 Participant eligibility.

(a) * * *

(2) * * *

(iv) Is an other than small business concern, unless approved by the Director of the Office of Small Business Programs (OSBP), Office of the Under Secretary of Defense, Acquisition and Sustainment (OUSD(A&S)), in accordance with 13 CFR 121.103 regarding "affiliation and relationship"; and

(3) Be capable of imparting value to a protégé firm because of experience gained as a DoD contractor or through knowledge of general business operations and Government contracting, as demonstrated by evidence that such entity-

(i) Received DoD contracts and subcontracts equal to or greater than \$100 million during the previous fiscal year;

(ii) Is a prime contractor to DoD with an active subcontracting plan; or

(iii) Has graduated from the 8(a) Business Development Program and provides documentation of its ability to serve as a mentor.

* * * * *

(h) Within 30 days of any change in status affecting eligibility, mentors and protégés must give notice and explanation of pertinent facts to each other, the Director of OSBP, OUSD(A&S), and the Director, OSBP, of the military department or defense agency.

* * * * *

I-104 Selection of protégé firms.

* * * * *

(c) Any interested party may file a protest of the selection of a protégé firm directly with the Director, OSBP, OUSD(A&S) or the Director, OSBP, of the cognizant military department or defense agency. In the event of a protest regarding the size or status of an entity selected to be a protégé firm, the Director, OSBP, OUSD(A&S), or the Director, OSBP, of the military department or defense agency must refer the protest to the SBA to resolve in accordance with 13 CFR part 121 (with respect to size) or other parts of title 13 of the CFR or this appendix (with respect to the protégé's socioeconomic status). The Director, OSBP, OUSD(A&S), or the Director, OSBP, of the military department or defense agency shall decide protests concerning all other aspects of a protégé's eligibility for the Program (e.g., nontraditional defense contractor or entity employing the severely disabled).

* * * * *

I-105 Mentor approval process.

(a) An entity seeking to participate as a mentor must apply to the Mentor-Protégé Program Director, OSBP, OUSD(A&S), to establish its initial eligibility as a mentor.

* * * * *

(c) A template of the mentor application is available at <https://business.defense.gov/Programs/Mentor-Protégé-Program/MPP-Resources/>.

* * * * *

I-106 Development of mentor-protégé agreements.

* * * * *

(g) The agreement shall demonstrate, through its execution, how it will contribute to the overall mission of DoD and/or fill or address an identified critical gap or vulnerability. Focus areas include, but are not limited to, manufacturing, research and development, and knowledge-based services.

I-107 Elements of a mentor-protégé agreement.

* * * * *

(k) A program participation term for the agreement that does not exceed 2 years. Requests for an extension of the agreement for a period not to exceed an additional 3 years are subject to the approval of the Director, OSBP, of the cognizant military department or defense agency. The justification must detail the unusual circumstances that warrant a term in excess of 2 years;

* * * * *

I-110 Credit agreements.

Sections I-110.1 and I-110.2 apply to all credit agreements, including agreements that provide for both credit and reimbursement.

* * * * *

I-111 Agreement terminations.

* * * * *

(f) The Director, OSBP, OUSD(A&S) or the Director, OSBP, of the military department or defense agency is authorized to terminate the mentor-protégé agreement for the convenience of the Government (to include national security grounds, funding

limits, statutory requirements, or other considerations), as well as for cause upon written findings (e.g., either of the participants' failure to perform or provide adequate assurance of performance; failure to comply with laws, regulations, and policies; conflicts of interest; or default under any provisions of a DoD contract or agreement).

* * * * *

I-113 Performance reviews.

DCMA will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protégé agreements. These reviews must verify data provided on the semiannual reports and must provide information as to—

(a) Whether all costs reimbursed to the mentor firm under the agreement were reasonably incurred to furnish assistance to the protégé in accordance with the mentor-protégé agreement and applicable regulations and procedures; and

(b) Whether the mentor and protégé accurately reported progress made by the protégé in employment, revenues, and participation in DoD contracts during the Program participation term and for 5 fiscal years following the expiration of the Program participation term.

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.